

FESTF

**FIFRA Endangered
Species Task Force**

Administrative Chair
Robin Charlton
Valent U.S.A. LLC
1600 Riviera Ave., Ste. 200
Walnut Creek, CA 94596
Ph: (925) 256-2820
Fax: (925) 817-5904
robin.charlton@valent.com

Technical Chair
Tilghman Hall
Bayer CropScience
2 T.W. Alexander Dr.
Research Triangle Park, NC 27709
Ph: (919) 549-2236
Fax: (919) 549-3906
tilghman.hall@bayer.com

Project Manager
Bernalyn McGaughey
Compliance Services Int'l.
7501 Bridgeport Way West
Lakewood, WA 98499
Ph: (253) 473-9007
Fax: (253) 473-2044
BMcGaughey@ComplianceServices.com

May 19, 2020

Rick Keigwin
Environmental Protection Agency
Office of Pesticides Programs
One Potomac Yard
2777 Crystal Drive
Arlington, VA 22202

Sent via Electronic Mail to Keigwin.Richard@epa.gov

RE: EPA-OPP Failure to Use Best Available Data in Methods for FIFRA/ESA Pesticide Product Assessments

Dear Mr. Keigwin:

We are writing on behalf of the FIFRA Endangered Species Task Force (FESTF), an organization of pesticide product registrants originally formed in 1994 to share in the cost of developing data in support of their pesticide registrations, as required by EPA, relative to potential impacts of their pesticide products on endangered and threatened species.

As provided in EPA's Pesticide Registration (PR) Notice 2000-2, EPA did not form nor is it a participant in FESTF; however, the Agency has provided FESTF members with extensive regulatory and technical feedback over the last two decades in the same normal manner that it provides to all registrants meeting data requirements. All of this EPA guidance is now reflected in FESTF's development of a robust information management system specifically designed to meet EPA's ongoing endangered species data requirements. In this context, EPA's failure to use FESTF-generated data to support the Agency's FIFRA endangered species assessments is both confusing and untenable, particularly as FESTF's data have been described by the National Academy of Sciences, U.S. Fish and Wildlife Service (FWS), *and EPA itself* as a component of the best available scientific and commercial data.

Under these circumstances, FESTF requests a meeting with EPA as soon as possible. FESTF will use the formal comment process to respond to the carbaryl and methomyl draft biological evaluations that were purportedly developed using EPA's *Revised Method for National Level Listed Species Biological Evaluations of Conventional Pesticides*. Separately, however, we are contacting you now because we are very concerned by EPA's current lack of attention to FESTF data. Under what the EPA Office of Pesticide Programs ("EPA-OPP") has described for many years as an evolving, iterative process that will be played out through individual pesticide product Registration Reviews ("Reviews"), and after more than 20 years of frequent EPA data requests and FESTF work described by EPA as "essential to the creation of a high quality endangered species Information Management System," rather than depend upon FESTF's best available data, EPA-OPP has instead wastefully and unnecessarily departed from its own well-established path and collected alternate data sets and built tools that are not current, transparent, validated, or complete.

MEMBER COMPANIES

ADAMA Agricultural Solutions, Ltd.
Albaugh, LLC
AMVAC Chemical Corp.
BASF Corp.
Bayer CropScience

Corteva Agriscience
Dow DuPont Operations
FMC Corporation
Gowan Company, LLC
ISK Biosciences Corp.

Nichino America, Inc.
Nippon Soda Co., Ltd.
Nissan Chemical Corporation
Nufarm Americas, Inc.
PBI-Gordon Corporation

Syngenta Crop Protection, Inc.
UPL Ltd.
Valent U.S.A. LLC.

In 1993, EPA-OPP began placing conditional requirements on pesticide registrations by calling for the submission of location and proximity data on Endangered Species Act threatened and endangered (“listed”) species. After several meetings with industry, EPA-OPP requested a feasibility study on how such submissions could be provided. This study was submitted jointly by a group of pesticide registrants that later were organized under FESTF, as announced in PR Notice 2000-2.¹ Agency staff, non-governmental organizations, and FESTF members subsequently met repeatedly to ensure that the feasibility study, data sources, and data management techniques would all be responsive to EPA’s requirements. Over all this time, FESTF’s goal has been to develop methods to collect, document, validate the quality of, and deliver listed species and related data necessary to support their products and inform the FIFRA species assessment process. Through many iterations of policy, these meetings continued and the FESTF goal of data aggregation and management remained valid.

As the data were aggregated and FESTF developed a tool to manage them, FESTF met as frequently as quarterly with EFED management and periodically other division staff (FEAD, RD and PRD) to obtain the Agency’s review of data of interest and the structure necessary to deliver those data.

From 1997 to 2000, FESTF and EFED scientists met in a series of design workshops after which FESTF commenced building the aggregated data and tools that were conceptualized from those workshops. After the first version of the Information Management System (IMS) and compiled data were built, FESTF participated in three EFED case studies on compounds that had completed Reregistration and had listed species findings. Outcomes of these case studies showed that the use of FESTF data and tools improved efficiency and completeness of the review process. FESTF member companies provided analysis of two additional compounds, atrazine (2001) and 2,4-D (2005), and the results of these efforts were subject to EPA review and resulting Data Evaluation Records (DERs). Based on EPA’s findings in the DERs, FESTF designed refinements to the IMS and data documentation. The 2,4-D assessment was used for a hands-on training workshop for EFED and FEAD staff. FESTF member companies FMC and Syngenta submitted data further demonstrating the application of FESTF work products to listed species assessments on clomazone (2009) and fomesafen (2009, updated in 2011), respectively. Over time the system was upgraded and workshops were held for EPA in 2010, 2012 and 2013 for the purpose of planning for a complete upgrade of the IMS. In 2011, EPA directed EFED staff to use FESTF data.²

With the 2013 announcement of the first “interim method” for conducting FIFRA species assessments, EPA, FWS, National Marine Fishers Service (NMFS) and USDA jointly notified the public that one of their first five steps under the interim process would be to meet with FESTF.³ Shortly after that announcement, and for the next two years, FESTF-EPA discussions expanded to include the FWS and NMFS (collectively, “the Services”) and the USDA Office of Pest Management Policy (“OPMP”) staff and management. In the course of these meetings, the agencies shared their additional data needs with FESTF and in 2014 a work plan was approved for FESTF to submit to EPA and the Service aggregated maps for species regulated by FWS.⁴ FESTF developed and submitted a total of 1,701 maps for listed species.⁵

¹ USEPA April 17, 2000. PRN 2000-2. *The FIFRA (Federal Insecticide, Fungicide, and Rodenticide Act) Endangered Species Task Force*

² USEPA May 10, 2011 Policy Memo from Don Brady to Managers and Staff of EFED. *Future Use: Use of FESTF-generated Proximity Analyses for Listed Species Effects Determination*

³ USEPA November 15, 2013. *Interim approaches for national-level pesticide endangered species act assessments based on the recommendations of the National Academy of Sciences April 2013 report.*

⁴ July 10, 2014 FESTF Work Plan for Generating Species Maps Using FESTF Aggregated Species Location Data and EPA-Provided Action Area Data

⁵ See MRID 49575201, 49643401, 49880801, and 50161401.

EPA and FWS endorsed the use of these maps noting:

*FESTF is an industry consortium established in 1997 to supply information to EPA and the Services in support of ESA consultation activities. **FESTF has been instrumental in gathering species location and life history information that is needed for FIFRA-ESA analyses. This included the creation of “map kits” based on NatureServe and other data, which were supplied to USFWS field offices to enable creation of GIS listed species range data that served as the basis for the draft BEs.** [emphasis added] Although efforts are ongoing to continue refinements to the current set of listed species range maps, the available information has been vetted by USFWS as reliable for use in ESA analyses. FESTF submitted a detailed response to this comment, which is provided in Attachment A.*⁶

In 2016, and responsive to the ongoing efforts mentioned above, FESTF finalized a second work plan for the provision of updated Status of the Species summaries for all listed species regulated by FWS.⁷

While generating maps and species summaries under the close instruction, supervision, and review of the FWS, FESTF was also redesigning the information management system of which the third iteration, Gopher, was released to the agencies in early 2019. The design of Gopher responds to agency staff requests for a flexible system that could be used to combine and retrieve both tabular and spatial data in order to inform FIFRA species assessments, which Gopher provides in a common, well documented, validated and current manner. By providing complete national updates of location and species summaries, and adding in additional data and data layers of express agency interest such as EPA’s endangered species knowledgebase and Army Corps of Engineers National Wetland Plant List, EPA and the Services both now have access to use of these data through Gopher.

In late 2019 and early 2020, and again under an agreed work plan and FWS supervision, FESTF provided an update to Status of the Species reports involving over 900 species for which listings or underlying data had changed significantly.

Notwithstanding FESTF’s unprecedented efforts to develop a comprehensive management system to address EPA’s data requirements, FESTF was frustrated by EPA’s unwillingness to agree to a 2019 meeting to provide FESTF an opportunity to explain its redesigned work products and provide training to EPA staff for those needing it. While numerous OPMP and FWS staff are now actively accessing the Gopher system and its data, only two EPA staff members have accessed Gopher to date. Two additional EPA staff members requested access but have not yet completed the NatureServe training process, which is a prerequisite for access to and use of NatureServe data.

In light of EPA’s long history of review, approval, and utilization of FESTF’s required data development efforts, it is shocking to see that in the finalization and application of the revised interim method, the products of 20 years of agency and registrant investment are now being completely ignored. Worse yet are the consequences of ignoring these data, among which are: (1) a complete lack of agency transparency regarding what data are being used to evaluate species and how they are selected; (2) inconsistent reference to and use of outdated datasets; (3) wasted time in independent collection of species attribute data that were already readily available; (4) use of data not considered authoritative by the Services; and (5) a highly visible failure to use best available data.

⁶ USEPA January 17, 2016 Memorandum, Melissa Panger, et al: Response to Comments on the Draft Biological Evaluations for Chlorpyrifos, Diazinon and Malathion, p. 13

⁷ February 5, 2016 Statement of Work: Assisting the US Fish and Wildlife Service Complete the Status of the Species for the National Pesticide Consultations

FESTF urges EPA to address this critically important situation. EPA's credibility, accountability, and accuracy under both FIFRA and ESA are at risk when best available data are ignored and when the handoff of their work products in consultation do not include data or tools matching those currently in use by their sister agencies. To overcome these shortcomings, FESTF requests a meeting⁸ with EPA management as soon as possible to propose for EPA's consideration corrective steps that can be put in place to implement EPA staff access to and use of FESTF data to review the registrations of the FESTF member companies and many other companies who are relying upon FESTF data.

Thank you,

Signed by FESTF officers on behalf of FESTF membership:

Robin Charlton

Robin Charlton
Administrative Committee Chair
Valent USA LLC

Tilghman Hall

Tilghman Hall
Technical Committee Chair
Bayer U.S. Crop Science

Diego Fonseca

Diego Fonseca
Administrative Committee Vice-Chair
Corteva Agriscience

Greg Watson

Greg Watson
Secretary
Bayer U.S. Crop Science

John Cummings

John Cummings
Treasurer
FMC Corporation

cc: EPA-OPP:

Marietta Echeverria, Director, Environmental Fate and Effects Division
Ed Messina, Deputy Office Director for Programs
Michael Goodis, Director, Registration Division
Elissa Reaves, Acting Director, Pesticide Re-Evaluation Division

FESTF member companies

⁸ FESTF understands that due to the current Covid-19 situation, any meeting planned for the near-term would be by conference call or videoconference.

Signature: 
Email: robin.charlton@valent.com

Signature: 
Tilghman Hall (May 21, 2020 16:45 CDT)
Email: tilghman.hall@bayer.com

Signature: 
John Cummings (May 21, 2020 11:21 EDT)
Email: john.cummings@fmc.com

Signature: 
Diego Fonseca (May 20, 2020 08:21 EDT)
Email: diego.fonseca@corteva.com

Signature: 
Greg Watson (May 27, 2020 10:13 CDT)
Email: greg.watson@bayer.com












Keigwin Letter


Final Audit Report

2020-05-27


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